

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 1ST NOVEMBER 2007 / 10TH KARTHIKA 1929

OP.No. 3579 of 1999(A)

PETITIONER:

**THE CHERUPU THOZHILALI UNION,
CITU FEROKE AREA COMMITTEE,
C/O. TILE WORKERS UNION OFFICE,
CHERUVANNOOR, FEROKE P.O.,
REPRESENTED BY ITS SECRETARY.**

BY ADV. SRI.P.RAMAKRISHNAN

RESPONDENTS:

- 1. THE LABOUR COURT, KOZHIKODE.**
- 2. THE MANAGER, RADIANT MOULDE AND
COMPOUNDS PVT. LTD., KOLLATHARA P.O.,
CALICUT.**

**BY GOVERNMENT PLEADER SMT.T.P.RAMANI
ADV. SRI.U.K.RAMAKRISHNAN
SRI.E.K.MADHAVAN
SRI.P.V.LOHITHAKSHAN
SRI.V.KRISHNA MENON**

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 01/11/2007, ALONG WITH OP NO. 7873 OF 1999, THE COURT ON
THE SAME DAY, DELIVERED THE FOLLOWING:**

O.P.No.3579/1999

:2:

APPENDIX

PETITIONRS EXHIBITS:

**EXT.P1: AWARD OF THE LABOUR COURT KOZHIKODE IN I.D.NO.92/93,
DATED 30.03.98.**

TRUE COPY

P.A.TO JUDGE

S.SIRI JAGAN,J

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O.P.Nos.3579 & 7873 of 1999

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Dated this the 1st day of November, 2007

JUDGMENT

In these two writ petitions both the management and the union challenge the same award passed by the Labour Court, Kozhikode in I.D.No.92/93. The issue referred for adjudication was justifiability of dismissal of the two workmen of the Management. The workmen were dismissed from service on being found guilty of the misconduct of theft, in a domestic enquiry conducted for the purpose. In view of the fact that the dismissal was after an enquiry the Labour Court considered the question of validity of the enquiry as a preliminary point. By a preliminary order the Tribunal held that the enquiry was valid and proper. Thereafter the Labour Court considered as to whether there is a sufficient evidence adduced in the enquiry to hold the workmen guilty of the misconduct alleged against them. In Ext.P1(in both writ petitions) award, the Labour Court came to the conclusion that there was sufficient evidence adduced in the enquiry to hold the workmen guilty of the charge levelled against them. Thereafter the Tribunal considered the

justifiability of the punishment of dismissal imposed on them. Ultimately the Labour Court directed payment of compensation of the Rs.7,500 to each workman in lieu of reinstatement. The Union is challenging the validity of the preliminary order on the ground that the enquiry was vitiated by violation of principles of natural justice. The management challenges the final award on the ground that, after finding the workmen guilty of misconduct of theft, the Labour Court ought not have directed payment of compensation in lieu of reinstatement.

2. The contention of the union is that although the Enquiry Officer allowed the presence of the enquiry officer in the enquiry, the union representative was not permitted to cross examine the witnesses. The second contention is that the workmen were not given the copy of the depositions. These contentions were considered by the Labour Court in the preliminary order in paragraphs 7 and 8 as follows;

“7. Now the only question for consideration is whether the domestic enquiry conducted against the workers is valid and proper. Ext.M1 series is the enquiry file containing enquiry report, proceedings of enquiry, depositions etc. Ext.M1(a) is the report of enquiry. The main allegation of the union is that no

sufficient opportunity was given to the workmen to cross-examine the witnesses of management and to adduce evidence on their behalf. On going through Ext.M1 I find the above allegations baseless. 3 witnesses were examined before the Enquiry Officer on the side of the management. They were cross-examined by the workers. The workers have also examined themselves as witnesses. It is clear from this that adequate opportunity was given to the workers to cross-examine the witnesses of management and to adduce evidence on their behalf. Therefore, I find no merit in the above contention of the union.

8. I have gone through Ext.M1, the enquiry file. I am satisfied that the Enquiry Officer has complied with the principles of natural justice. The workers fully participated in the enquiry. It was argued by the counsel for the union that the entire enquiry was over in a single day which has caused much prejudice to the workers. But the Enquiry Officer as MW1 testified that the workers did not request to adjourn the enquiry to another day and that they also did not demand the copy of depositions of the witnesses. Having regard to all these I hold that the domestic enquiry conducted by MW1 against the workmen is valid and proper."

3. The union has not chosen to adduce evidence before the labour court to prove their contentions. The counsel for the union was not able to point out anything in the proceedings in the enquiry which goes to show that they had in fact requested the Enquiry officer to permit the union representative to cross-examine the workmen which was refused. On the other hand they themselves cross-examined the witnesses. Therefore unless the union adduced evidence to prove that such a request was

made before the Enquiry Officer and he refused that opportunity, the union cannot now contend that such an opportunity was denied to the workmen, especially since there is nothing in the enquiry proceedings to show that such an opportunity was asked for and declined and the workers themselves had cross-examined the witnesses also. Therefore, I do not find any merit in the said contention. Regarding non-furnishing of the copy of depositions, admittedly, the entire enquiry was over in one day. It is on record in the enquiry proceedings that workers did not request to adjourn the enquiry to another day and that they did not demand copies of depositions. Here also the union did not adduce evidence that they had requested for copies of the depositions which was refused failing which they cannot contend that the enquiry is vitiated for non-supply of copies of depositions.

4. The learned counsel for the union submits also that there was no sufficient evidence in the enquiry to prove the workmen guilty of offence of theft. In Para 10 of the award under challenge this point was discussed as follows:

“The next point to be considered is whether the findings of the Enquiry Officer are perverse. In other words the question is whether the findings of the Enquiry Officer are based on legally acceptable evidence. The charges levelled against the workmen are that on September 24, 1993 in the early morning they committed theft of 4 pairs of chappals from the factory and also that on the same day they refused to accept the show cause notice issued to them by the management and they thereby committed the misconducts of insubordination and refused to obey the lawful orders of their superiors. MW1 to MW3 were examined and Exts.M1 to M6 were marked on the side of the management, before the enquiry officer. MW1 was Sri.Kuttan Menon, the watchman who detected the theft committed by the workmen. MW2 was Mr. Sudheesh, the manager of the factory. MW3 was Mr.Salim, the peon of the factory. MW1 testified before the Enquiry Officer that on September 24, 1993 at about 4 p.m. while he was walking around the factory he found 4 pairs of chappals on the roof of the pigeon's nest on the western side of the godown, that at about 5.25 a.m. The worker Gafoor took those chappals and threw it to outside the compound wall and that when he followed to him he found the workers taking away the chappals and caught them red handed MW3 would say that when he went to the workmen to service show cause notice issued by the management they refused to receive them. Nothing was brought out during their cross-examination to discredit their evidence or to show that they have any enmity towards the workmen. The counsel for the union argued that mW1 Sri.Kuttan Menon is a person who is not mentally sound that subsequent to the incident he committed suicide and that therefore the enquiry officer is not correct in believing his evidence. There is no force in the above contention. Except the interested version of MW1, workman No.1 there is no evidence to show that the said workman was mentally unsound. Having regard to all these, I feel that the enquiry officer is perfectly justified in believing the evidence of management and coming to the conclusion that the charges levelled against the workmen are proved. It follows that the findings of the enquiry officer are not perverse and are based on legally acceptable evidence.”

5. From the same I am satisfied that there was sufficient evidence to hold the workmen guilty of the misconduct of theft. As such I do not find any merit in the challenge of the union against the findings also.

6. The next question relates to punishment. The workmen would contend that even assuming that the theft is proved as observed by the Labour Court, the same was in respect of chappals worth only Rs.100/- for which the punishment of dismissal from service is not warranted. On the other hand the learned counsel for the management would submit that after finding the workmen guilty of offence of theft the Labour Court ought not to have directed payment of compensation in lieu of reinstatement.

Whether theft is of one rupee or one lakh rupees theft is theft and simply because the value of the materials stolen is only Rs.100/- the gravity of the misconduct cannot be held to be serious enough to warrant the punishment of dismissal. A workman who has a tendency of stealing property of the employer cannot be held to be fit to continue in service, since he

had proved himself to be untrustworthy. However, since the Labour Court had directed payment of only Rs.7,500/- each to the workmen as compensation, I am not inclined to interfere with the same in exercise of discretionary jurisdiction under Article 226 of the Constitution of India. Accordingly both writ petitions are dismissed.

S.SIRI JAGAN, JUDGE

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